

NOTICE

76

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
CIVIL ACTION  
NO. 06-0790C

Notice sent  
04.01.10

M.I

MWD

AAG

RAN:gm  
LDH

MRB

KTP:pc

(md)

COMMONWEALTH OF MASSACHUSETTS,  
Plaintiff

v.

NEW VENTURES ASSOCIATES, LLC,  
Defendant

ORDER OF THE COURT ON COMMONWEALTH'S EMERGENCY MOTION FOR  
ORDER GRANTING SITE ACCESS TO REPAIR LANDFILL DAMAGE,  
DECLARING THAT DEFENDANT IS IN DEFAULT, AND ORDERING DEFENDANT  
TO SUBMIT LANDFILL CLOSURE AND POST-CLOSURE COST ESTIMATES

Following a hearing and oral argument on March 29, 2010 regarding this emergency motion of the Commonwealth, this Court issues the following post-judgment order:

(1) The MassDEP and its contractors are granted immediate access to the Crow Lane Landfill for the purpose of repairing the damaged FML and gas extraction wells. Any effort by the Defendant to deny the MassDEP access to the landfill site as ordered herein shall be considered contempt of court.

(2) For the reasons set out below, and as established in the affidavits of John A. Carrigan and Richard J. Chalpin, and pursuant to the terms of Paragraph 6(a) of the Trust Agreement, I declare and so find that the Defendant has violated its "post-closure maintenance obligations" and "otherwise failed to cure any corrective action, closure or post-closure related condition

contained in any notice to the Grantor [the defendant] from the Department [MassDEP],...” and thus has breached the Trust Agreement and defaulted.

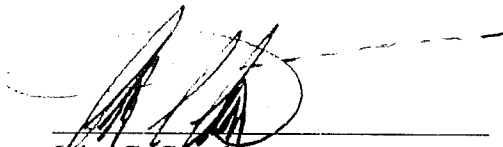
(3) Based on the breach of the Trust Agreement and the default described in Paragraph (2), MassDEP is hereby authorized to control and direct the use and disbursement of all remaining Trust funds as needed to reimburse contractors performing the repairs to the damaged FML and damaged gas extraction wells, as described in Paragraph (1).

(4) Based on the breach of the Trust Agreement and the default described in Paragraph (2), the defendant shall, pursuant to the Trust Agreement and 310 C.M.R. 19.051(2), submit for MassDEP review and approval a revised closure and post-closure cost estimate that itemizes and clearly identifies the assumptions utilized in estimating the closure and post-closure costs and provides detailed data and information that supports and justifies the assumptions utilized in closure and post-closure cost estimates including, without limitation:

- a. The length of time the LFG control system is proposed to operate;
- b. The amount of pretreatment media that will be utilized including the purchase and disposal costs;
- c. The amount and cost for the collection and disposal of condensate;
- d. The cost of the maintenance and replacement of the pretreatment tanks;
- e. The cost of the maintenance and replacement of the enclosed flare;
- f. The labor cost to operate, maintain, and monitor the operation of the LFG control system;
- g. The quantity and cost of propane as an auxiliary fuel for the enclosed flare;
- h. The inspection and maintenance of the landfill cover including mowing, storm water controls, erosion repair, inspection and monitoring of the Berm stability including the MSE Wall (or Berm);
- i. The collection and disposal of leachate including the volume and disposal cost; and
- j. The itemized cost of conducting environmental monitoring of the Landfill including labor for sample collection and report preparation and the sample analytical costs.

I make this decision and order because of the undisputed evidence in affidavit form that a public health hazard has been created by the recent storm which blew off the cap or cover (the FML) over 1.5 acres of the landfill in question as well as the defendant's unwillingness and/or inability over many weeks to make these emergency repairs. Furthermore, I find from the same affidavits that three of the gas extraction wells are broken and the defendants have likewise been unwilling and/or unable to repair them. Furthermore the same affidavits establish that there have been similar delays on the part of the defendants regarding "post-closure maintenance obligations" under the Trust Agreement in the past. Finally, the current issue raised by the defendant about the confidentiality of tax returns holding up any repairs is insufficient in my mind to justify the three to four week delay in the defendant acting to make these urgently needed repairs.

Therefore, for all the reasons cited herein, this Order shall issue forthwith.



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John C. Cratsley  
Justice of the Superior Court

March 30, 2010

notice sent  
03.31.10  
(mdj)